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No. 98-982

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1998

GLORIA J. THOMPKINS,

Petitioner,

v.

QUINCY'S RESTAURANT, INC.,

Respondent.

On Petition For Writ Of Certiorari
To The Court of Civil Appeals of The
State Of Alabama

PETITIONER'S REPLY BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether or not the Court erred in granting summary judgement on Petitioner's Complaint for damages for Wantonness?

2. At what point is it permissible for a Corporation in the business of selling food to sell to a consumer food that is unfit for human consumption?

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 USC, 1254(1).

STATUTORY PROVISIONS

28 USC, 1254(1)
21 USC, SEC. 342(3)

STATEMENT OF THE CASE

Petitioner filed her initial Complaint in Bullock County, Alabama Circuit Court alleging Negligence (Count I); Res Ipsa Loquitur (Count II); Breach of Implied Warranty of Fitness for Human Consumption (Count III); and Violation of the Alabama Extended Manufacturers Liability Doctrine (IV). (C 9). The case was transferred to the Circuit Court of Montgomery County, Alabama on December 7, 1995. (C 4).

Petitioner filed an Amendment to Complaint on January 8, 1996 (C 20) and a Second Amended Complaint alleging wantonness sometime prior to February 7, 1996. Petitioner subsequently filed two other Amended Complaints. (C 76 and C 90 respectively).

Respondent filed a Motion for Summary Judgement on April 24, 1997 (C 143) and Petitioner's Response was filed on May 9, 1997. (C 230). The Trial Court entered an Order "that Summary Judgement is Granted to Defendant as to Count V, Wantonness" on May 12, 1997. (C 305). Petitioner filed a Motion for Reconsideration on July 10, 1997 asking the Trial Court to reconsider its ruling granting Summary Judgement as to the wantonness count. (C 327). A pre-trial order was entered by the Trial Court disallowing Petitioner's Second Complaint(the wantonness count) from consideration. (C 335).

The trial of the case commenced on September 22, 1997. Petitioner claimed medical expenses, which were proven, loss earnings, and damages for permanent injuries. (C 45-47; C 279-280). On September 24, 1997 a verdict for Respondent was rendered by the Jury. (C 373). Petitioner filed Notice of Appeal on October 9, 1997, pro se. (C 374). On April 24, 1998 the Court of Civil Appeals affirmed the Judgement without opinion. Petitioner's Application for Rehearing was filed on May 8, 1998 and was denied on June 12, 1998 without opinion. A Petition for Writ of Certiorari was filed in The Supreme Court of Alabama on June 19, 1998 and was denied October 16, 1998 without opinion.

REASONS FOR GRANTING THE WRIT

I. RESPONDENT (QUINCY'S) IS A RESTAURANT WHICH IS IN THE BUSINESS OF PREPARING AND SELLING FOOD TO CUSTOMERS TO EAT ON AND OFF THE PREMISES.

The yeast rolls sold by Respondent to Petitioner were prepared from scratch while Petitioner waited for them. (C 11). At least one of the rolls Petitioner ate contained a 2 1/2 inch long piece of plastic paper which had been cut at an angle as though cut with a pair of scissors. (C 17). When Petitioner showed Linda Sears (the manager on duty) the rolls and the paper which had been extracted from the roll, Ms. Sears told Petitioner that the object came from the yeast roll mix. (C 26). Rather than following proper procedures by perserving the evidence and submitting it to TW Risk Management (C 248), Linda Sears threw the evidence away. (C 246). A former manager of Respondent stated that it was impossible for a foreign object to accidentally fall into the mixing bowl. (C 208). Futhermore, the difference in color and texture between the mix and paper was so distinctive that the paper would have been easily detectible by the person preparing the mixture. (C 196).

21 USC, SEC. 342(3) is the statutory provision believed to set out guidelines for what is considered adulterated food.

II. THIS COURT HAS JURISDICTION TO REVIEW ON WRIT OF CERTIORARI THE JUDGEMENT OR ORDER IN QUESTION.

28 USC, 1254(1) is the statutory provision believed to confer on this Court jurisdiction to review on Writ of Certiorari.

CONCLUSION

For the reasons given above, the Petition For Writ Of Certiorari should be granted.

Respectfully submitted,

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21 USC, SEC. 342(3) Adulterated Food

* * *

A food shall be deemed to be adulterated -

(3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.

* * *

28 USC, 1254(1). Court of appeals; certiorari; certified question

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Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgement or decree.

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